**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT Of ILLINOIS**
**EASTERN DIVISION**

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| **MARIA N. GRACIA,** | |
| **Plaintiff,** | **Case No. 2011 C 7604** |
| | **Judge Edmond E. Chang** |
| **SIGMATRON INTERNATIONAL, INC.,** | |
| **Defendant.** | |

**PLAINTIFF'S STATEMENTS PURSUANT TO**
**LOCAL RULE 56.1(b)(3) IN OPPOSITION TO SUMMARY JUDGMENT**

Plaintiff, Maria N. Gracia, submits her Statements pursuant to LR 56.1(b)(3). Each numbered paragraph 1 through 48 of defendant's LR 56.1 statement is quoted below (without defendant's citations to Exhibits, footnotes, or argumentative subsection titles). Plaintiff's response to each numbered paragraph follows.

Thereafter, Plaintiff's Statement of Additional Facts, paragraphs A1 through A32, is set forth.

**Plaintiff's Response to Defendant's LR 56.1 Statement**

1. SigmaTron, founded in 1994, is a full service electronics manufacturing service provider with a network of manufacturing facilities in the United States, Mexico, China, and Vietnam. SigmaTron serves a diversified set of markets which include: appliance, consumer, electronics, fitness, industrial electronics, medical/life sciences, semiconductor, telecommunications, and automotive.

**Undisputed.**[1]

2. Greg Fairhead has held the title of Executive Vice President of SigmaTron since March 2000 and presently serves as a member of SigmaTron's Executive Committee.

**Undisputed.**

3. In November 2007, Mr. Fairhead succeeded to the responsibilities of' James Henderson, SigmaTron's then-Director of Operations, when Mr. Henderson left the employ of SigmaTron.

**Undisputed.**

4. When he took over Mr. Henderson's duties, Mr. Fairhead concluded that the operations needed to get back on track and he took a hands-on approach to correct problems that were adversely affecting SigmaTron's operations (including attendance, tardiness, quality, workmanship) by, among other things, attending every production meeting and constantly communicating with managers (including Patrick Silverman-the then Plant Manager) to strictly adhere to the rules that had been established many years before but that had not been strictly followed and enforced by supervisors in years past under Mr. Henderson's watch.

**Disputed. No competent evidence has been offered as to whether or when "rules . . had been established many years before" or the content of " the rules".**

5. Plaintiff began her employment with SigmaTron on July 12, 1999 as an Assembly Line Inspector on the second shift; a union position

**Disputed. Plaintiff began working for SII as a temp. Her first job with SII after permanent hire was "assembler." (Exhibit 1 (Declaration of Maria N. Gracia ("Gracia Dec.") ¶ 4)).**

6. On March 27, 2006, Plaintiff's [sic] was promoted to Assembly Supervisor; a non-Union position.

**Undisputed.**

[1] Throughout, plaintiff's agreement that a statement is not disputed is not intended as acquiescence that the undisputed statement is relevant or material.

7. As the Assembly Supervisor, Plaintiff had day-to-day responsibility to produce assemblies for SigmaTron, which included:

- the output and quality of Printed Circuit Boards;
- the scheduling of lines and product flow;
- the hiring of Assembly Department team members;
- the directing of team members;
- the approving of Personal /Vacation days for team members;
- the disciplinary actions for team members;
- the training of team members.

**Undisputed.**

8, To accomplish her responsibilities as an Assembly Supervisor, Plaintiff had the authority to:

- Stop production due to quality, safety, and customer requirements;
- Schedule Assembly personnel to meet production goals
- Enforce any disciplinary action(s) per company policy;
- Re-assign any employees clue to business demands.

**Undisputed.**

9. It is extremely critical in SigmaTron's business that SigmaTron follow its customer's specifications exactly. The customer's product performance, as well as, Sigmaron's reputation/success in the industry depends on this occurring on each and every assembly manufactured. If specifications are not followed according to the customer's written requirements, then SigmaTron can be held liable for the damages/cost of the product, which can be quite significant. Further, the contamination of solder types can be very expensive; the solder in one machine alone can cost over $20,000 to replace due to contamination.

**Undisputed as a statement of principle, but plaintiff disputes that SII follows specifications exactly on every project. (Exhibit 1, Gracia Dec.¶40); Exhibit 12 (Declaration of Michael Murphy ¶3).**

10. SigmaTron regularly conducts training classes, taught by an industry recognized/certified trainer, to keep employees informed and current with their job classification(s).

**Disputed. Exhibit 6 is an inadmissible hearsay letter written by someone without personal knowledge of its contents; Exhibit 7 is a collection of unrelated documents**

**which do not support the statement in Paragraph 10. A certificate from a single class does not tend to prove that "SII regularly conducts training classes."**

11. On June 16, 2008, Plaintiff completed a Component Preparation class that focused on the critical difference between Leaded Assemblies, Lead Free Assemblies, and RoHS Compliance (Reduction of Hazardous Substances) and the important characteristics/distinctions of each.

**Disputed. SII's exhibits do not establish the focus of this class.**

12.. One of Plaintiff's primary responsibilities as an Assembly Supervisor was to train her employees on various aspects of assembling circuit boards-including soldering and the differences in solder types.

**Undisputed.**

13. Plaintiff was tardy in excess of 90% of the time between April 22, 2008 and July 21, 2008. During a meeting on July 21, 2008, with Mr. Silverman and Mr. Fairhead, Plaintiff was warned that if her tardiness continued, she would be subject to further disciplinary action up to and including immediate termination.

**Undisputed.**

14. Plaintiff was tardy on twenty more occasions during the next three months that followed (from July 21, 2008 through October 15, 2008).

**Undisputed.**

15. On October 15, 2008, Plaintiff was again told that her tardiness continued to exceed a tolerable level; that her tardiness demonstrated to the SigmaTron employees she supervised that she had a carefree attitude about her job responsibilities. Plaintiff was further ormed that her tardiness caused shift start up issues and that it is "hard to expect.. line workers to be on their stations on time when [she was] lax[ed] [*sic*] in doing so."As a disciplinary measure, Plaintiff was suspended for two days without pay and told that if she missed any scheduled time in the next 90 days immediate termination would result. Plaintiff could not have been suspended without Mr. Fairhead's approval of same.

**Undisputed that plaintiff was suspended. Conclusory *post hoc* statement that**

**Mr. Fairhead's[2] approval was required is disputed. Greg Fairhead's signature appears to have been added to Exhibit 9 after that of Patrick Silverman.**

16. On October 23, 2008, Plaintiff was spoken to after she took a 35 minute break from 9:15 AM-9:50 AM in the purchasing department; Plaintiff was warned against taking excessive breaks and against disrupting other employees during her breaks.

**Undisputed, except plaintiff disputes the inference that she disrupted other employees on October 23, 2008.**

17. On October 30, 2008, Plaintiff was spoken to after it was discovered during a very important plant tour on October 28, 2008 with a potential SigmaTron customer that Plaintiff had failed to display certain required visual aids and customer instructions, for which she was responsible, on the Assembly Line.

**Undisputed.**

18. On October 30, 2008, Plaintiff was spoken to after she took 70 minutes for lunch although she was only allowed 60 minutes.

**Disputed that plaintiff took 70 minutes for lunch. (Exhibit 1 (Gracia Dec. at ¶37)**

19. On December 4, 2008, Eduardo Trujillo, Plaintiffs close associate/friend observed that Plaintiffs assembly line workers were knowingly failing to follow the strict standard of solder technology on a customer's assembly in violation of both SigmaTron's policies and the customer's specifications.

**Disputed. that Mr. Trujillo observed more than one worker using an incorrect solder type. (Exhibit 1 (Gracia Dec. ¶47)). Mr. Trujillo disputes his involvement (Exhibit 4 (Trujillo Dep. 22:10-13)). Defendant has offered no competent evidence as to the content of**

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[2] Plaintiff assumes that defendant intends to refer to Greg Fairhead, SII's Executive Vice-President, and not his brother, Gary Fairhead,, who is CEO of SII. Plaintiff will use first names instead of "Mr." for clarity. No disrespect is intended.

**"the customer's specifications."**[3]

20. Mr. Trujillo approached Plaintiff and told her that he had observed that she was allowing products to be soldered incorrectly; however Plaintiff did nothing to stop the action.

**Disputed. (Exhibit 1, Gracia Dec. ¶48; Exhibit 4 (Trujillo Deposition p. 22:10-13)). Mr. Trujillo does not recall asking plaintiff a question about soldering.**

21. Mr. Trujillo knew that this activity was totally unacceptable to SigmaTron and most likely in violation of the customer's specification, so he immediately told Mr. Silverman what he had seen.

**Disputed. Mr. Trujillo testified that he did not tell Mr. Silverman about any alleged problem of this nature:**

> **Q. Okay. And do you recall on or about -- sometime in December 2008 calling to Mr. Silverman's attention something that you had observed regarding soldering on a line that Ms. Gracia was in charge of?**
>
> **A No.**
>
> **Q. Okay. And do you recall at any time ever calling to anyone's attention a problem with the types of solder that were being used on a production line.**
>
> **A No. (Exhibit 4 (Trujillo Deposition, p. 16:16-24)).**

22. Once Mr. Silverman confirmed that Plaintiff was mixing the solder types on a customer's assembly, he had production immediately stopped; he segregated the product that had been mixed; and he reported the incident to Mr. Fairhead.

**Disputed. Exhibit 1 (Gracia Dec. ¶48). Plaintiff stopped Lattaben**

[3] SII Exhibit 6 (an inadmissible hearsay letter from SII's HR department to the Illinois Department of Employment Security) refers to a customer's specifications and states that they are enclosed, but they are not part of Exhibit 6.

**Patel from continuing to solder.**

23. Mr. Fairhead went to the area where the incident had occurred and questioned the
employees who were out on the assembly floor when the incident occurred and had them explain
to him what had taken place.

**Disputed. There is no foundation for any conversation.**

24. When Mr. Fairhead met with Mr. Trujillo the next day, Mr. Trujillo confirmed that: 1) Plaintiff was knowingly mixing solder types in the assembly process, 2) Mr. Trujillo had talked to Plaintiff about the issue; 3) Plaintiff did not stop and correct the issue; 4) Mr. Trujillo knew that this activity was totally unacceptable to the company and most likely in violation of the customer's specification; and 5) Mr. Trujillo had told Mr. Silverman about it.

**Undisputed that Mr. Trujillo met with Greg Fairhead. Disputed that plaintiff was knowingly mixing solder types (Ex. 1, Gracia Declaration at ¶49).**

25, Mr. Fairhead and Ms. Miedema met with Plaintiff about the Incident, at which time, Plaintiff admitted that her workers had been mixing solders and that, based on her training which focused on the importance of following customer specifications and not mixing solder types, she knew that allowing her workers to mix the solders was unacceptable.

**Disputed. SII Exhibit 6 is an inadmissible hearsay letter by Christine Kucera, who has no personal knowledge of the subject matter, and it is also incomplete inasmuch as it refers to multiple attachments which SII has not included. SII Exhibit 7 is a collection of unrelated documents which do not support Paragraph 25. See Exhibit 1 (Gracia Dec. ¶¶ 47-49).**

26. Plaintiff knew it was important to follow customer's specification, had signed her initials (MG) that she had received the customer's requirement/assembly instructions that clearly specified that leaded solder only be used, and conceded that Mr. Fairhead believed that Plaintiffs actions were unacceptable.

**Disputed.** SII Exhibit 6 is an inadmissible hearsay letter by Christine Kucera, who has no personal knowledge of the subject matter, and it is also incomplete inasmuch as it refers to multiple attachments which SII has not included.. Exhibit 7 does not support the statement in Paragraph 26.

27. On December 5, 2008, Mr. Fairhead terminated Plaintiffs employment with SigmaTron because of Plaintiff's admitted, knowing failure to require her production workers to adhere to customer specifications and company policies, and her unprofessional cavalier attitude towards her job responsibilities.

**Disputed. The reason why SII terminated plaintiff's employment is a mixed question of law and fact and one of the ultimate issues in this case. See response to Paragraph 28.**

28. There is no reason other than those provided in Plaintiffs disciplinary notices and formal write ups why Plaintiff was disciplined.

**Disputed.**

**Patrick Silverman told Eduardo Trujillo that Mr. Trujillo should stay away from plaintiff because Mr. Silverman would be "throwing bombs" at plaintiff, which Mr. Trujillo understood as meaning that Patrick Silverman was trying to get plaintiff fired. (Exhibit 4 (Trujillo Deposition p. _____________.**

**Mr. Silverman's own disciplinary initiatives increased in frequency and**

**severity after: 1) plaintiff rejected his insistent invitation to the movies in August, 2008 (for plaintiff's birthday) (Exhibit 1 (Gracia Dec. ¶14)); and 2) Ms. Miedema and Greg Fairhead had made Mr. Silverman aware that plaintiff had complained about Mr. Silverman's late night calls to plaintiff from a supplier party. (Exhibit 6 (Miedema Dep. p. 85:18-86:7)). 85**

**With respect to SII's termination of plaintiff's employment, SII has taken the position that Patrick Silverman did not directly participate in the decision (SII LR56.1 Statement at ¶45) so his conclusion or opinion on the reason for the termination would be speculative and immaterial.**

**The Equal Employment Opportunity Commission notified SII of plaintiff's Charge of Discrimination on or about November 8, 2008, and sent a copy of plaintiff's Charge to SII on December 2, 2008, both in close proximity to the termination of plaintiff's employment. (Exhibit 10, SII's Answer to Complaint at ¶17))**

29. Plaintiff is a female of Hispanic ethnic origin.

**Undisputed.**

30. Eduardo Trujillo is a male of Hispanic ethnic origin.

**Undisputed.**

31. At the time of her termination, Plaintiff was the only Assembly Supervisor at SigmaTron.

**Disputed. Edmund Royel was also an Assembly Supervisor at SII. Mr. Royel worked on the second shift. (Exhibit 1 (Gracia Dec. ¶ 4)).**

32. At the time of Plaintiff's termination, Mr. Trujillo held the title of Auto Insertion Supervisor and was responsible for maintaining the automation equipment; Plaintiff did not have any of the same responsibilities as Mr. Trujillo.

**Disputed as to conclusion that plaintiff and Mr. Trujillo did not have the same responsibilities. Each had administrative responsibilities for the employees who reported to them. (Exhibit 1 (Gracia Dec. at ¶54) Undisputed as to Mr. Trujillo's title.**

33. The only facts alleged by Plaintiff in support of her sexual harassment claim relate to the following allegations:

- On one occasion, Mr. Silverman allegedly pulled on the turtle neck of Plaintiff's sweater.

- Mr. Silverman forwarded 17 e-mails (the "E-mails") to Plaintiff and others male SigmaTron employees that Plaintiff claims to be offensive including:

  - o 1 e-mail on May 8, 2007
  - o 1 e-mail on June 12, 2007
  - o 6 e-mails on August 24, 2007
  - o 1 e-mail on August 31, 2007
  - o 1 e-mail on September 12, 2007
  - o 1 e-mail on November 14, 2007
  - o 1 e-mail on November 15, 2007
  - o 1 e-mail on December 10, 2007
  - o 1 e-mail on January 30, 2008
  - o 1 e-mail on April 21, 2008
  - o 1 e-mail on June 24, 2008
  - o 1 e-mail on July 1, 2008

- On the occasions Mr. Silverman brought pastries for SigmaTron staff, Mr. Silverman hand delivered a pastry directly to Plaintiff (which she accepted)

- On at least one occasion, Mr. Silverman asked to stay at Plaintiff's home after a Cubs game so he could avoid the long drive to his home in Rockford.

- On more than one occasion, Mr. Silverman texted Plaintiff (sometimes at night) and asked if they should grab dinner or meet up.

- On at least one occasion, Mr. Silverman insisted that Plaintiff attend and ride with him to the Industry Trade Show at the Rosemont Convention Center where SigmaTron had a booth on display;

- On one occasion in December 2007, Mr. Silverman called Plaintiff multiple times from a

> SigmaTron supplier's party in an effort to persuade her to join him and another employee at the party.

**Disputed. Defendant's attempt to itemize the facts which support plaintiff's claim of hostile work environment is both over- and under- inclusive. (Exhibit 2 (Affidavit of Kathryn E. Korn)) . These were not the "only facts alleged."**

**Plaintiff only saved some of the offensive e-mails which Patrick Silverman sent her from his SigmaTron e-mail account, and her EEOC charge and complaint were based upon those saved e-mails as well as the ongoing pattern of Patrick Silverman's objectionable conduct.**

**The supplier party referenced in the last bullet point did not occur in December, 2007. (Exhibit 1 (Gracia Dec. ¶31)) and the "other employee," Dave Niemi, whom Patrick Silverman claims had used Silverman's phone to place a call to plaintiff (Ex. 5 (Silverman Dep. at ____) did not attend the party with Patrick Silverman. (Exhibit 3 (Certification of Dave Niemi)).**

34. Plaintiff did not understand any of Mr. Silverman's text messages to suggest that Mr. Silverman wanted to have a sexual encounter with Plaintiff.

**Disputed, (Exhibit 1 ( Gracia Dec., ¶19)). While plaintiff did not see a texted request from Silverman for an immediate sexual relationship, she understood his statements and actions as indications that he was likely to make**

**such a request at any time.**

35. Mr. Silverman never told Plaintiff that he wanted to have sex with her nor did Mr.Silverman ever ask Plaintiff to have sex with him.

**Undisputed.**

36. Mr. Silverman never told Plaintiff that she was required to do anything when he gave her the pastries (which she accepted) or asked her to the movies-no quid pro quo.

**Undisputed.**

37. Plaintiff never told Mr. Silverman that she did not want to receive the E-mails (which he intended to convey as jokes); she did not even communicate to him about the e-mails nor did she tell Mr. Silverman that she did not appreciate receiving the e-mails he sent.

**Undisputed.**

38. SigmaTron's Policy Against Harassment requires employees who believe they may have been harassed or who receive reports of harassment of others to, among other things, immediately report it to SigmaTron's Human Resources Manager or Corporate Human Resources Manager, Ms. Miedema.

**Disputed. The document which SII cites is undated and therefore has not been authenticated. Sandra Miedema, SII's corporate HR Director, testified that there was no policy on this subject at SII until she initiated one sometime in 2001, but the document which she initiated had a date at the bottom. (Exhibit 4 (Miedema Dep. p. 23: 18 - p. 24:20)). Moreover, Ms. Miedema's testimony**

**conflicts with the position taken by SII in earlier litigation, when it alleged that it had adopted a policy against harassment in 1994 and updated that policy in 2000. (Exhibit 11 at p. 4) "It is undisputed that the Company adopted a sexual harassment policy in 1994 . . [and] that the policy was updated in 2000 as part of an employee handbook." Adding to the confusion, Ms. Miedema testified that when she started her job with SII in 2001, she started to do a handbook, but Gary Fairhead told her not to do a handbook. (Exhibit 6 (Miedema Deposition p. 23:5-17)).**

39. Plaintiff had previously read and signed an acknowledgement of receipt of the policy and knew that she was required to report any harassment to Ms. Miedema or Christine Kucera, Elk Grove Plant HR Administrator but Plaintiff never complained to Ms. Miedema or Ms. Kucera about any allegations of sexual harassment.

**Disputed. See response to Paragraph 38. The contents of the document which plaintiff acknowledged are unknown.**

**Plaintiff complained to Ms. Miedema about the sexual harassment which she was experiencing on October 20, 2008. (Exhibit 1 (Gracia Dec. ¶ ¶22-25)).**

40. Plaintiff never told Ms. Miedema about any of the E-mails.

**Undisputed.**

41. Plaintiff never told Ms. Miedema or Mr. Fairhead that Mr. Silverman had allegedly sent Plaintiff late night text messages inviting her to go out with him.

**Undisputed as to text messages specifically.**

42. Plaintiff never told Ms. Miedema that Mr. Silverman had allegedly requested an outside-of-work relationship with her (by allegedly asking Plaintiff if he could come over to her home on nights of Cubs games or when he was downtown to sleep over, or to the movies).

**Disputed. Ms. Miedema realized, after speaking with plaintiff, that Patrick Silverman was "maybe pushing at" plaintiff. (Exhibit 6 (Miedema Deposition p. 84:7-17)**

43. Plaintiff never told Ms. Miedema that Plaintiff had allegedly pulled on the turtleneck of Plaintiff's sweater.

**Undisputed.**

44. Mr. Silverman could issue discipline to Plaintiff, but Mr. Silverman did not have the power to independently hire, promote, suspend, or terminate Plaintiff.

**Disputed. SII has produced no job description pertaining to Patrick Silverman, but plaintiff's job description (SII Exhibit 5) states that she had authority to hire while holding an inferior position. Logically, Patrick Silverman would have had as least as much, if not more, authority in personnel matters.**

45. In fact, Mr. Silverman never recommended that Plaintiff be terminated; Mr. Silverman did not even know, before it happened, that Plaintiff was going to be terminated.

**Disputed. By reporting an infraction which typically would have gone unnoticed to Greg Fairhead, Patrick Silverman effectively made such a**

**recommendation, even if not explicitly. See Exhibit4 (Trujillo Dep. p. 18:19 - 19:15).**

46. On November 6, 2008, Plaintiff filed a charge of discrimination based on sex discrimination, national origin discrimination, and retaliation with the Equal Employment Opportunity Commission ("EEOC Charge").

**Undisputed, except that Plaintiff initiated her Charge on November 3, 2008. (Exhibit13 (copy of EEOC Charge Detail Inquiry)).**

47. Although the first page of Plaintiff's First EEOC Charge alleged that Plaintiff had been discriminated against by SigmaTron as early as October 15, 2008 and as late as October 30, 2008, the second page indicates that Plaintiff had been discriminated against by SigmaTron as early as August 29, 2007 and as late as November 3, 2008.

**Disputed. Plaintiff filed only one EEOC Charge so the reference to a "First" Charge is incorrect. SMT-GRACIA 0105 is not "the first page of" plaintiff's EEOC Charge. It is a "Notice of Charge of Discrimination" which the EEOC prepared and plaintiff did not review or sign. SMT-GRACIA 0106 is a copy of plaintiff's Charge. In addition to stating that the dates discrimination took place were 8/29/07 through 11/3/08, the Charge states that it is a "Continuing Action."**

48. On October 25, 2011, Plaintiff filed the instant Complaint alleging the following two Counts against SigmaTron: Counts I-"Discrimination, Harassment, Ands [sic]

Hostile Work Environment in Violation of Title VII, Civil Rights Act of 1964, 42 U.S.C. § 2000E, *et seq*.";and Count II- "Retaliation".

**Undisputed.**

**Plaintiff's Statement of Additional Facts**

Plaintiff submits the following Additional Statements of Fact, which are numbered sequentially A1 through A32.

A1. As Assembly Supervisor, plaintiff reported to Patrick Silverman, SII's Production Manager(sometimes called "Manufacturing Manager" or "Plant Manager.". (Exhibit 10, SII's Answer to Complaint at ¶9)..

A2. Plaintiff believed that Patrick Silverman had full managerial authority over the employees in SII's manufacturing operation, including the power to hire, fire, discipline, suspend, promote or demote such employees. (Exhibit 1 (Gracia Dec., ¶ 6).

A3. Patrick Silverman sent the following emails to plaintiff's SII e-mail address from his SII e-mail address:

i) On September 12, 2007 Patrick Silverman sent to plaintiff an email with the subject line "Original Homeland Security." with a message about illegal immigration. (Exhibit 1 (Gracia Dec.¶6).

ii) On November 14, 2007, Patrick Silverman sent to plaintiff an e-mail with the subject line"Redneck Tractor Pull," in which a woman is depicted from the rear, her buttocks are bare, and she is walking ahead of a skid on which two cases of beer are stacked. The skid is attached to the woman's thong underwear. Several people are gaping at her. (Exhibit 1 (Gracia Dec. ¶ 7(b)( i)).

iii) On November 14, 2007, Patrick Silverman also sent to plaintiff an e-mail with the subject line:"Do these sunglasses make my face look fat?" In this e-mail, a smiling woman is wearing sunglasses and a bathing suit. Her breasts have been grotesquely enlarged. (Exhibit 1 (Gracia Dec. ¶7(b)(ii)).

iv) On November 15, 2007, Patrick Silverman sent to plaintiff an e-mail in which the subject line is "Best Beach Photo." In the attached image, a woman is lying face down on a plastic beach lounge. Her grotesquely enlarged bare breasts protrude through the plastic and nearly touch the sand. (Exhibit 1 (Gracia Dec. ¶ 7(c) )).

A4. On August 29, 2007 Eduardo Trujillo (male, Mexican-American) forwarded to plaintiff an e-mail which he had received from Patrick Silverman. The subject line is, “Yep, I passed it on.” Patrick Silverman had distributed an e-mail critical of Mexican immigrants to Mr. Trujillo and several other SigmaTron employees. This email had three attachments including one depicting a Mariachi band in a baseball stadium. Instead of the correct words for the Star Spangled Banner, the caption reads”Jose canoe si?” Another attachment depicts a map of the United States and Mexico, labeled “Yours” over Mexico, and “Not Yours” over the United States. Mr. Trujillo passed it on to plaintiff. (Exhibit 1 (Gracia Dec. ¶ 8)).

A5. The emails described in Paragraph A3 and A4 are those which plaintiff saved. She did not save every offensive email which Patrick Silverman sent to her while she reported to him at SII.. (Exhibit 1 (Gracia Dec. ¶9)).

A6. Among the offensive emails which Patrick Silverman sent to plaintiff which she did not save is one dated April 21, 2008 which SII produced in discovery. It is a “photo-shopped” image of plaintiff’s sister, Laura Gracia, who at one time also worked at SII. In this image, the face of Michael Murphy, who worked at SigmaTron as the Engineering Manager, is superimposed over the face of Laura Gracia’s baby son. The words, “Mama . . . leche por favor!” are added to the photo-shopped version. (See Defendant’s Exhibit 24 at SMT-GRACIA 430-31. In plaintiff’s opinion, the addition of the Spanish language caption, (which means “Mama, milk please”) and the superimposition of the face of an adult man so that he appears to be looking at Laura Gracia's breasts, is offensive to women in general, and especially to women of Mexican-American heritage. (Exhibit 1 (Gracia Dec. ¶ 10 )).

A7. Additionally, Defendant's Exhibit 24 at SMT-GRACIA 240 is an email which Patrick Silverman sent to plaintiff which is sharply critical of Mexican immigrants, and suggests that they should be sent to fight in Iraq without weapons.

A8. In April, 2008, plaintiff moved out of her parents' home to an apartment in Chicago which she shared with Laura Gracia. After plaintiff was no longer living with her parents, Patrick Silverman frequently directed unwanted telephone calls and text messages to her during the evenings and into the night. (Exhibit 1 (Gracia Dec. ¶¶ 12-13 )).

A9. In advance of plaintiff's birthday in August, 2008 Patrick Silverman told plaintiff repeatedly that she should go to dinner and a movie with him, requiring plaintiff to repeatedly decline his invitations. (Exhibit 1 (Gracia Dec. ¶ 14 )).

A10. On "Sweetest Day" in late October, 2007 Patrick Silverman, gave plaintiff a greeting card for the occasion (Exhibit 1 (Gracia Dec. ¶15 )).

A11. When SII participated in an annual trade show at the Rosemont Convention

Center, Patrick Silverman directed plaintiff to ride from the SigmaTron plant in Elk Grove Village to Rosemont with him in his car, and he directed other SII employees who were also going to the same trade show to travel there in other vehicles. Plaintiff was reluctant to ride alone with Patrick Silverman in his car. (Exhibit 1 (Gracia Dec. ¶ 17 ).

A12. When Patrick Silverman brought pastries for SII employees generally, he sometimes made a point of calling plaintiff to his office so that he could give me a pastry individually. He told plaintiff that he was doing this to observe Valentine's Day and Sweetest Day. (Exhibit 1 (Gracia Dec. ¶ 18).

A13. On one occasion, while plaintiff was standing on the SII production floor during her shift, Patrick Silverman pulled the neckline of plaintiff's sweater down so that he could look at her neck. (Exhibit 1 (Gracia Dec. ¶16)); (Exhibit 4 (Trujillo Dep. P. 26:9-22)) . Plaintiff was frightened, embarrassed, and became anxious that Patrick Silverman might unexpectedly pull on her clothing in the future. (Exhibit 1 (Gracia Dec. ¶16)).

A14. Plaintiff met with Sandra Miedema, SII's Corporate HR Director, on October 20, 2008 for the purpose of reporting that Patrick Silverman was sexually harassing plaintiff and creating a hostile work environment for her. (Exhibit 1 (Gracia Dec. ¶ 22-24)).

A15. Ms. Miedema's response to plaintiff's complaint included asking whether a different SII employee, program manager Tony Truppa, was the one causing the problem, asking plaintiff whether Patrick Silverman was "sweet on" her; and asking plaintiff whether she was "on drugs." (*Exhibit 1 (Gracia Dec. ¶¶23-24, 26)).

A16. Ms. Miedema's responses deterred plaintiff from providing further details about Patrick Silverman's conduct because Ms. Miedema seemed not to be taking plaintiff seriously. Exhibit 1(Gracia Dec. ¶ 28)).

A17. Plaintiff told Ms. Miedema that Patrick Silverman had telephoned her at night asking her to meet him at a party, and that he had sounded intoxicated. Ms. Miedema, took this report to Greg Fairhead, "because I didn't like the idea of him maybe pushing at her or anything." (Exhibit 6 (Miedema dep.p. 84:7-17).

A18. .Patrick Silverman told Greg Fairhead that someone else, Dave Niemi, had used Mr. Silverman's mobile phone to make a call to plaintiff.and that Mr. Niemi was familiar with the location of plaintiff's residence and knew her phone number. (Exhibit 6 (Miedema Dep., p. 86 :2-12).

A19. When Patrick Silverman told Greg Fairhead , on or about October 24,

2008, that it had been Mr. Niemi, and not he, who had called plaintiff from the supplier party, Greg Fairhead knew or should have known that Patrick

Silverman's attempted explanation was extremely unlikely, because Mr. Niemi had left SII three years earlier. (Exhibit 3 (Niemi Certification at ¶2)).

A20. Nevertheless, Greg Fairhead did not investigate Patrick Silverman's attempted explanation. (Exhibit 14 (Fairhead Deposition at 132: 10-16). He did not speak with Mr. Niemi. (Exhibit 3 (Niemi Certification at ¶4)); Exhibit 14 (Fairhead Deposition at 117: 4-6 ) Greg Fairhead had "no idea" whether anyone else at SII followed up with Mr. Niemi (Exhibit 14 (Fairhead Deposition at 117: 4-8.))

A21. Plaintiff became increasingly anxious about Patrick Silverman's conduct because she feared, based on his statements and actions, that he was leading up to making a demand for an unwanted sexual relationship with her. Plaintiff reported to Patrick Silverman, and knew that, as Manufacturing Manager, he had the authority to issue discipline to everyone who worked in manufacturing at Sigmatron's Elk Grove Village, Illinois plant. Plaintiff also believed that Patrick Silverman had the authority to terminate her employment. (Exhibit 1 (Gracia Dec. ¶ 19 )).

A 22. Plaintiff's anxiety about Patrick Silverman's actions interfered with her job performance, because she attempted to avoid Patrick Silverman as much as possible, resulting in tardiness and a noticeable change in plaintiff's. demeanor. (Exhibit 5 (Silverman Dep., p. 65 :16 - 66:18); Exhibit 6 (Miedema

Dep. 78:11 - 80:9)).

A23. SII's documents do not accurately or fully reflect plaintiff's conversations with Sandy See SMT-GRACIA 0088 (Exhibit G to the Declaration of Maria N. Gracia) and Exhibit 8 (using the vague phrase "she mentioned some problems with Patrick.").

A24. Sandy told Greg Fairhead, Sigmatron's Executive Vice President, about plaintiff's report that Patrick Silverman had called her at night from a supplier party. Greg Fairhead spoke with plaintiff about these calls, saying that, "it only happened one time," and generally talking over plaintiff, when she tried to correct Greg Fairhead's misimpression and report that there had been more than one call from the party and other unwanted calls and texts on other nights. (Exhibit 1 (Gracia Dec. ¶31)).

A25. Dave Niemi has never called plaintiff at her home. (Exhibit 3 (Niemi Certification)); Plaintiff has not spoken with Mr. Niemi after he left SII in 2005. PX (Exhibit 3 (Niemi Certification); Exhibit 1 (Gracia Dec. ¶32)).

A26. As an assembly supervisor, plaintiff was not required to punch in or out when she went to lunch or took a break. After attempting to report sexual harassment to Sandy, and having her report disclosed to Patrick Silverman, someone apparently made a point of watching plaintiff's movements, noting that she returned from a break five minutes late on October 23, 2008 and that she returned from lunch ten minutes late on October 30, 2008. Exhibit 1 (Gracia Dec. at ¶¶35 -38).

A27. Patrick Silverman warned Eduardo Trujillo to stay away from plaintiff, because Silverman planned to "throw bombs" at plaintiff. Mr. Trujillo understood this to mean that Mr. Silverman would be looking for reasons to have plaintiff fired. (Exhibit 4 (Trujillo Dep. p. 25 : 7 - 27:4; p. 40: 17 - 41: 5)

A28. Plaintiff did not "mix solder types" or cause any serious problem for SII when a team leader permitted one assembler to hand solder using RoHS (lead-free) solder on a circuit boar which could have been assembled using leaded solder. (Exhibit 12 (Declaration of Michael Murphy); Exhibit 1 ( Gracia Dec. ¶¶ 39 through 52); Exhibit 4 ( Trujillo Dep. p. 17: 19 -18:7).

A29. Without input from anyone at SII, Patrick Silverman made the determination that plaintiff should be classified as ineligible for rehire. Exhibit 5 (Silverman Dep., p. 66:20-67:2)).

A30. Patrick Silverman can recall no instance in which he made a recommendation that an SII employee be terminated and his recommendation was not followed. Exhibit 5 (Silverman Dep., p. 111:11-22)).

A31. SII discourages its employees from retaining emails and it has no document retention policy. (Exhibit 7 (Rovtar Dep. p.12:4-11; p. 26: 16-19)).

A32. Greg Fairhead received copies of plaintiff's EEOC Charge dated December 1 , 2008 and of the Notice of Charge dated November 6, 2008 from someone within SigmaTron. (Exhibit 14 (Greg Fairhead Dep.p. 75: 15-16; p. 76: 15 -19). Ms. Miedema testified that the general practice for distribution of such documents is for Gary Fairhead, the CEO ,to scan them and distribute them via email to herself, to Greg Fairhead and also to Linda Frauendorfer, the CFO. (Exhibit 6 (Miedema Dep., p.51: 6-15)).

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